

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE

JOHN B., CARRIE G., JOSHUA M., MEAGAN A. )  
and ERICA A., by their next friend L.A.; )  
DUSTIN P., by his next friend, Linda C.; )  
BAYLI S. by her next friend, C.W.; )  
JAMES D. by his next friend, Susan H.; )  
ELSIE H. by her next friend Stacy Miller; )  
JULIAN C. by his next friend, Shawn C.; )  
TROY D. by his next friend, T.W.; )  
RAY M. by his next friend, P.D.; )  
ROSCOE W. by his next friend, K.B.; )  
JACOB R. by his next friend, Kim R.; )  
JUSTIN S. by his next friend, Diane P.; and )  
ESTEL W. by his next friend, E.D.; )  
individually and on behalf of all others )  
similarly situated, )

Plaintiffs, )

v. )

DAVE GOETZ, Commissioner, Tennessee )  
Department of Finance and Administration; )  
J.D. HICKEY, Assistant Commissioner, )  
Bureau of TennCare; and VIOLA P. MILLER, )  
Commissioner, Tennessee Department of )  
Children's Services, )

Defendants. )

No. 3-98-0168

Judge Haynes

**STATEMENT OF COUNSEL IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL**

Michele Johnson. states as follows:

- 1) I am a member of the bar of this court and one of the Plaintiffs' counsel of record in this action.
- 2) Pursuant to Rule 37(a)(2), F.R.C.P., and Local Rule 37.01, the Plaintiffs are filing a renewed motion to compel the State to make discovery in response to the Plaintiffs' Third Set of Interrogatories and Request for Production of Documents. As required by Local Rule 37.01(b)(3), I am submitting this

statement in support of that motion, for purposes of describing the Plaintiffs' good faith efforts to resolve the matter by agreement.

- 3) We served the Third Set of Interrogatories and Request for Production of Documents on March 31, 2007. The state's written responses were served on Plaintiffs May 15, 2006.
- 4) There have been a series of orders dealing with the outstanding issues. Starting in November 2006 dealing with the state's discovery failures in the area of ESI, Former State employees, Children's Special Services files, missing hard copy documents from key custodians, state contractor ESI and hard copy production. See Doc. 734: Transcript at 29, 68; Doc. 743 at 2, Doc. 789, Doc. 734 p. 56-57 and 786 pp 43-44 and Order of 11-21-06 Doc. 734 at 3.
- 5) Since the time of these orders I and my co-counsel have written literally hundreds of letters in an effort to obtain the discovery requested nearly a year ago and ordered by the court in November 2006. Attached as collective Exhibit A is the correspondence regarding these issues from November 6, 2006 to the present.
- 6) I and my co-counsel Gordon Bonnyman met and conferred with opposing counsel on all of these topics on February 13, 2007. Ms. Nicole Moss and one of her co-counsel, Mr. Michael Kirk, discussed these issues for approximately four hours. In one area we thought we have made significant progress in narrowing the issues. That was short-lived.
- 7) Ms. Moss and Mr. Kirk agreed to give us a sample of documents that they believed were non-responsive but were identified by the key word search. The parties agreed that this would speed the process of winnowing the key words such that the keywords would be more likely to pull the most responsive documents. We promised to narrow the key words based on this sample by using actual language in these documents. Ms. Moss said she had already

begun analyzing these documents for privilege and responsiveness, so providing us these documents would not be a problem. Additionally we agreed to take away as many wildcards, the symbol for which is “\*”, in the search terms as possible.

- 8) We never received this sample. Now the state claims they will not entertain our feedback on the search terms at all. See State’s Response to Plaintiffs’ Motion for a Status Conference Doc. 826, p10. Instead the state insists on using the two words that Ms. Moss herself said in November were “grossly underinclusive.” See Transcript 734 at 28.
- 9) On February 22, 2006, my co-counsel, Gordon Bonnyman, sent a letter to defense counsel memorializing those discussions.

Dated this 8<sup>th</sup> day of March, 2007.

Respectfully submitted,

s/Michele M. Johnson  
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## **CERTIFICATE OF SERVICE**

I certify that a copy of this document has been served on the state defendants and the monitors on the 7<sup>th</sup> day of March, 2007, by the Electronic Court Filing system addressed as follows:

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s/ Michele M. Johnson  
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